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Clerk of the
Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs August 1, 2023

STATE OF TENNESSEE v. JEFFREY GEORGE TULLEY

Appeal from the Circuit Court for Henderson County
Nos. 22-030-2A, 22-031-2A, 22-032-2 Donald H. Allen, Judge

No. W2023-00086-CCA-R3-CD

Jeffrey George Tulley, Defendant, pleaded guilty to three counts of sale of 0.5 grams or more of methamphetamine, three counts of delivery of 0.5 grams or more of methamphetamine, and four counts of possession of a firearm during the commission of a dangerous felony. At sentencing, the trial court imposed three concurrent sentences of eleven years on the drug counts and a consecutive four-year sentence for the firearm counts, as a Range I offender, in the Tennessee Department of Correction. On appeal, Defendant argues that the trial court imposed an excessive sentence. Following our review of the entire record and the parties' briefs, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed.

MATTHEW J. WILSON, J., delivered the opinion of the court, in which TIMOTHY L. EASTER, and JOHN W. CAMPBELL, SR., JJ., joined.

Samuel W. Hinson, Lexington, Tennessee, for the appellant, Jefferey George Tulley.

Jonathan Skrmetti, Attorney General and Reporter; Katherine C. Redding, Senior Assistant Attorney General; Jody S. Pickens, District Attorney General; and Eric V. Wood, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual and Procedural Background

This case arises from three drug transactions between Defendant and a confidential informant ("CI"), who was working with the Henderson County Sheriff's Department in March and April 2021. In three separate transactions, Defendant sold approximately twenty-seven grams, three grams, and three-quarters of a gram of methamphetamine to the CI. During two of the transactions, Defendant was armed with a firearm. Each of the

transactions was audio and video recorded. The Henderson County Grand Jury charged Defendant in three separate indictments. Case Number 22-030-2A charged Defendant with one count of sale of 0.5 grams or more of methamphetamine (a Class B felony), one count of delivery of 0.5 grams or more of methamphetamine (a Class B felony), and two counts of possession of a firearm during the commission of a dangerous felony (a Class D felony). Case Number 22-031-2A charged Defendant with one count of sale of 0.5 grams or more of methamphetamine, one count of delivery of 0.5 grams or more of methamphetamine, and two counts of possession of a firearm during the commission of a dangerous felony. Case Number 22-032-2 charged Defendant with one count of sale of 0.5 grams or more of methamphetamine, and one count of delivery of 0.5 grams or more of methamphetamine. Under Tennessee Code Annotated sections 40-35-114 and -202, the State filed a notice of its intent to seek certain enhancement factors from the statute. On September 23, 2022, Defendant pleaded guilty to all charges without an agreement as to sentencing.

On November 22, 2022, the trial court held Defendant's sentencing hearing. At the hearing, as to Case Number 22-030-2A, the court merged the sale and delivery counts, and merged the two firearm counts. In Case Number 22-031-2A, the court merged the sale and delivery counts, and merged the two firearm counts. In Case Number 22-032-2, the trial court merged the sale and delivery counts. As a Range I offender, Defendant faced a sentencing range of eight to twelve years on each of the merged drug convictions, and three to four years on each of the merged firearm convictions, consecutive to the drug convictions. *See* Tenn. Code Ann. § 40-35-112(a)(1), (4).

At the sentencing hearing, the State exhibited a presentence investigation report prepared for Defendant, and offered no further proof. Defendant, fifty-eight years old, called his crimes "completely stupid." He claimed he was working "under the table" as a land surveyor and engineer to avoid losing his disability benefits from a prior injury. Defendant, who had been in jail for nearly ten months, asked the trial court to impose a sentence without further incarceration so he could resume work for a family member and regain his disability benefits. Defendant denied having a drug problem, but said he would do "[a]nything to get back to [his] grandkids," including rehabilitation and counseling. After Defendant testified, his counsel asked the trial court to sentence Defendant to probation.

During the State's argument, the prosecutor argued that there were factual differences between Defendant's cases and the case of a co-defendant, David Webb, who was sentenced earlier that day. Webb was charged with one of the drug transactions rather than Defendant's three. The State noted that Defendant "was the one [who] was with the CI from the beginning." The State also reminded the court that Defendant had brandished firearms during two of the drug transactions unlike Mr. Webb who had no firearms while

he sold drugs. The State left the sentence to the trial court's discretion. The trial court took Defendant's sentencing under advisement to review the presentence investigation report and continued the hearing until a later date.

On December 6, 2022, the trial court resumed Defendant's sentencing hearing. The court recounted the charges to which Defendant pleaded guilty, the factual bases for his pleas, and the proof Defendant introduced at the November 22, 2022 hearing. The court considered the nature of Defendant's crimes, calling them "very serious matters" that involved the "distribution of large quantities of methamphetamine [on] at least two occasions . . . that [Defendant] sold and delivered to individuals." The court noted that during two of the drug transactions, Defendant was armed with a firearm.

The trial court acknowledged that it would consider all the proof, as well as "the principles of sentencing and the arguments that [had] been made by counsel as to sentencing alternatives." The trial court correctly found Defendant was a Range I standard offender and found the applicable sentencing range for the drug convictions to be eight to twelve years imprisonment, and three to four years imprisonment on the firearm convictions consecutive to any sentence on the drug convictions.

The trial court then considered the mitigation and enhancement factors found in Tennessee Code Annotated sections 40-35-113 and -114. For each of the ten convictions, the trial court applied enhancement factor (1), that Defendant had a history of criminal convictions or criminal behavior in addition to those necessary to establish the sentencing range. *See* Tenn. Code Ann. § 40-35-114(1). While it noted Defendant was a Range I offender, the trial court recounted Defendant's seven prior misdemeanor convictions, and gave "great weight" to Defendant's conviction history. Specifically, the trial court gave great weight to Defendant's prior convictions for domestic violence, drug possession, and driving under the influence (DUI). The court gave little weight to Defendant's prior conviction for a speeding ticket, but noted that Defendant had driven on a revoked license while on probation for an earlier offense. The court found Defendant had not availed himself of court-ordered substance abuse treatment ordered as part of his drug possession and DUI sentences. The court also gave great weight to Defendant's past drug usage, including marijuana, cocaine, heroin, and methamphetamine noting that Defendant "states he has tried most every illegal drug."

The trial court applied enhancement factor (2), finding Defendant was a leader in committing his offenses. *See* Tenn. Code Ann. § 40-35-114(2). The court found while his co-defendant Mr. Webb was involved, it was Defendant who had "set up the [sales] and deliveries of these large amounts of methamphetamine" on three separate occasions. The court also applied enhancement factor (9), finding Defendant possessed or employed a firearm "when he committed at least two of these [sales] and deliveries of

methamphetamine.” *See id* § 40-35-114(9).

The trial court addressed the mitigating factors in Tennessee Code Annotated section 40-35-113. The court considered Defendant’s mental health issues under factor (8), including a diagnosis of post-traumatic stress disorder, and Defendant’s admitted claims of having “some type of bipolar, manic depression.” As to Defendant’s prior work history and drug abuse, the court found “nothing I can consider for mitigating purposes.”

The trial court acknowledged Defendant’s acceptance of responsibility in pleading guilty, but also considered that “the State had some very strong evidence against [Defendant] as well,” and referred to Defendant’s drug sales being audio and video recorded by police officers.

The trial court expressed its concern with the community impact of Defendant’s crimes, noting that methamphetamine distribution was “rampant” in Henderson County. The court found that Defendant was distributing methamphetamine on “a regular basis.”

The trial court sentenced Defendant to eleven years in the Tennessee Department of Correction on each of the six drug convictions as a Range I offender, and ordered the sentences to run concurrently. As required by law, the court was required to impose consecutive sentences for the firearm convictions. *See* Tenn. Code Ann. § 39-17-1324(e). The court imposed sentences of four years on the firearm convictions to run consecutively to the eleven-year sentence, but concurrently with each other, for a total effective sentence of fifteen years imprisonment. The court ordered that Defendant’s sentences for the drug convictions would be served at thirty percent, while the firearms sentences would be served at 100 percent. The trial court found Defendant was not a suitable candidate for probation or alternative sentencing, given that his effective sentence was fifteen years imprisonment. Additionally, the court found that a sentence of probation would fail to protect the interests of society from Defendant’s future crimes, depreciate the seriousness of the offenses, and deter others from engaging in similar criminal conduct.

This timely appeal follows.

II. Analysis

Sentencing

Defendant argues the trial court erred in imposing sentence, challenging the length of his effective fifteen-year sentence for his ten convictions. Specifically, Defendant argues that the court “erred in not sentencing [Defendant] to the minimum sentence within the range.” The State argues the trial court acted within its discretion when it imposed

Defendant's sentences. We agree with the State.

“[S]entences imposed by the trial court within the appropriate statutory range are to be reviewed under an abuse of discretion standard with a ‘presumption of reasonableness.’” *State v. Bise*, 380 S.W.3d 682, 708 (Tenn. 2012). A reviewing court should uphold the sentence “so long as it is within the appropriate range and the record demonstrates that the sentence is otherwise in compliance with the purposes and principles listed by statute.” *Id.* at 709-10.

Trial courts are “required under the 2005 amendments [to the Sentencing Act] to ‘place on the record, either orally or in writing, what enhancement or mitigating factors were considered, if any, as well as the reasons for the sentence, in order to ensure fair and consistent sentencing.’” *Id.* at 698-99 (quoting Tenn. Code Ann. § 40-35-210(e)). The 2005 amendments to the Sentencing Act “abandoned the statutory presumptive minimum sentence and rendered enhancement factors advisory only.” *State v. Anderson*, No. W2022-00669-CCA-R3-CD, 2023 WL 3019008, at *8 (Tenn. Crim. App. Apr. 20, 2023) (citing Tenn. Code Ann. §§ 40-35-114, -210(c)); *See* Tenn. Code Ann. § 40-35-114; *see also Bise*, 380 S.W.3d at 701; *State v. Carter*, 254 S.W.3d 335, 343 (Tenn. 2008). Our supreme court has stated that “a trial court’s weighing of various mitigating and enhancement factors [is] left to the trial court’s sound discretion.” *Id.* at 345. In other words, “the trial court is free to select any sentence within the applicable range so long as the length of the sentence is ‘consistent with the purposes and principles of [the Sentencing Act].’” *Id.* at 343 (quoting Tenn. Code Ann. § 40-35-210(d)).

In determining the proper sentence, the trial court must consider: (1) the evidence, if any, received at the trial and the sentencing hearing; (2) the presentence report; (3) the principles of sentencing and arguments as to sentencing alternatives; (4) the nature and characteristics of the criminal conduct involved; (5) evidence and information offered by the parties on the mitigating and enhancement factors set out in Tennessee Code Annotated sections 40-35-113 and 114; (6) any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee; (7) any statement the defendant made on the defendant’s own behalf about sentencing; and (8) results of the validated risk and needs assessment conducted by the Department of Correction and contained in the presentence report. *See* Tenn. Code Ann. § 40-35-210(b); *State v. Taylor*, 63 S.W.3d 400, 411 (Tenn. Crim. App. 2001). The trial court must also consider the potential or lack of potential for rehabilitation or treatment of the defendant in determining the sentence alternative or length of a term to be imposed. Tenn. Code Ann. § 40-35-103 (5).

Here, the trial court appropriately considered the sentencing factors. The court had evidence of Defendant’s repeated distribution of significant amounts of methamphetamine.

On two of those occasions, Defendant did so while armed with a firearm. The trial court considered Defendant's presentence report and his criminal history of domestic violence, DUI, and drug possession. The court correctly noted Defendant had committed new crimes while serving probationary sentences. The trial court also considered Defendant's admission that he had tried "most every illegal drug." The trial court considered the mitigating and enhancement factors, applying the enhancements but choosing not to apply the mitigating factors.

The court considered Defendant's testimony at sentencing and referred to it several times in explaining its decision to impose Defendant's sentence. Unfortunately for Defendant, his testimony was not very helpful to his request for probation. The court noted Defendant, who was drawing disability payments, was also working "under the table," and found Defendant did not "have any really lawful employment." While Defendant admitted to a long history of drug use to the probation officer, he denied having a drug problem when he testified at his sentencing hearing. For similar reasons, the trial court considered Defendant's potential for treatment and rehabilitation and denied his request.

The record reflects the trial court properly considered the principles of sentencing and sentenced Defendant within the appropriate range. As such, Defendant's sentence is presumed reasonable. Contrary to Defendant's argument on appeal, he was not entitled to the minimum sentence, and it was within the trial court's discretion not to impose one.

After due consideration, we conclude the evidence supports the trial court's application of the statutory aggravating factors, the weight the trial court gave these factors, and the trial court's rejection of Defendant's proposed mitigating factors. Further, we conclude the trial court properly considered the lack of potential for rehabilitation or treatment of the defendant when it denied his request for probation or alternative sentencing. As the trial court correctly stated, Defendant pleaded guilty to selling drugs, not using them. Consequently, the trial court did not abuse its discretion in imposing an effective fifteen-year sentence and denying Defendant probation or alternative sentencing in this case.

III. Conclusion

Based on the foregoing analysis, we affirm the judgments of the trial court.

MATTHEW J. WILSON, JUDGE